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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO
HONORABLE JUDY HOLZER HERSHER, JUDGE, DEPARTMENT 45

---oOo---

JOAN BOICE, by and through her)	
Successor-in-Interest, ERIC)	
BOICE, and ERIC BOICE, NANCEE)	
BOICE, and MARK BOICE,)	
individually,)	
)	
Plaintiffs,)	Case No.
)	
vs.)	34-2009-00063714
)	
EMERITUS CORPORATION dba)	
EMERITUS AT EMERALD HILLS,)	
)	
Defendant.)	

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REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS

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TUESDAY, MARCH 5, 2013

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DIANNE COUGHLIN, CSR No. 10418

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APPEARANCES:

For the Plaintiffs:

CLEMENT & ASSOCIATES
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- AND -

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For the Defendant:

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San Bernardino, California 92408
By: BRYAN R. REID, Attorney at Law

- AND -

LEWIS, BRISBOIS, BISGAARD & SMITH, LLP
KIM M. WELLS, Attorney at Law
2850 Gateway Oaks Drive, Suite 450
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I N D E X

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E X H I B I T S

[None marked.]

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1 TUESDAY, MARCH 5, 2013

2 AFTERNOON SESSION

3 --oOo--

4 The matter of JOAN BOICE, by and through her
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE,
6 NANCEE BOICE, and MARK BOICE, individually, Plaintiffs,
7 vs. EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,
8 Defendants, Case No. 34-2009-00063714, came on regularly
9 this day before Honorable JUDY HOLZER HERSHER, Judge of
10 the Superior Court of the State of California, for the
11 County of Sacramento, Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE,
14 NANCEE BOICE, and MARK BOICE, individually, were
15 represented by LESLEY A. CLEMENT, ASHLEY BAIRD (not
16 present), SEAN LAIRD, and VALERIE DAWSON (not present),
17 Attorneys at Law.

18 The Plaintiffs ERIC BOICE and MARK BOICE were
19 present.

20 The Defendant, EMERITUS CORPORATION dba EMERITUS
21 AT EMERALD HILLS, was represented by BRYAN R. REID, RIMA
22 BADAWIYA, and KIM M. WELLS, Attorneys at Law.

23 - - -

24 **The following proceedings were had in the**
25 **presence of the jury:**

26 THE COURT ATTENDANT: All rise. Department 45 is
27 once again back in session, the Honorable Judge Judy
28 Hersher presiding.

1 You may be seated.

2 THE COURT: All right. May I please see the hand
3 of the presiding juror?

4 [Juror No. 2 raises hand.]

5 THE COURT: So Ms. Sheer, is it accurate that the
6 jury has reached verdicts on both of the verdict forms
7 that were submitted to them for their consideration?

8 JUROR NO. 2: That's correct, Your Honor.

9 THE COURT: Do you have the forms with you?

10 JUROR NO. 2: I do, Your Honor.

11 THE COURT: Could you hand them, please, to our
12 court attendant?

13 Now what you are going to see me do is, I am going
14 to take a couple of minutes, and I am going to look
15 through -- Terrance, to me. I am going to look through
16 the verdict forms, make sure that they appear to be --
17 that you have appeared to follow my directions to you,
18 so just give me a moment.

19 [Reviewing.]

20 All right. They appear to be in the correct
21 format.

22 Would the court attendant please hand the verdicts
23 to the court clerk?

24 Madame Clerk, if you would please start out by
25 reading the verdict form for Neglect, VF-3103/3904.

26 ///

27 ///

28 ///

NEGLECT VERDICT

THE CLERK: [Reading:]
Superior Court of California, County of
Sacramento. Joan Boice, by and through her
Successor-in-Interest, Eric Boice, and Eric
Boice, Nancee Boice, and Mark Boice
individually, Plaintiffs, vs. Emeritus
Corporation, dba Emeritus at Emerald Hills,
Defendant, Case No. 2009-00063714.

Verdict Form 3103/3904. Neglect - Elder
Abuse and Dependent Adult Civil Protection
Act/Enhanced Remedies, Punitive Damage
Sought Against Emeritus Corporation, dba
Emeritus at Emerald Hills.
VF-3902/VF-3903/VF 3904.

We, the jury, answer all of the questions --
the following questions submitted to us as
follows:

1. Was Joan Boice 65 years of age or older
at all times relevant to her claim for
damages against Emeritus Corporation?

Answer: Yes.

if your answer to question 1 is yes, answer
question 2. If no, stop here and answer no

1 further questions, and have your presiding
2 juror sign and date the verdict form.

3

4 Question 2. Was Joan Boice in Emeritus
5 Corporation's care or custody?

6

7 Answer: Yes.

8

9 If your answer to question 2 is yes, answer
10 question 3. If you answered no, answer no
11 further questions, and have your presiding
12 juror sign and date the verdict form.

13

14 No. 3. Did one or more of Emeritus
15 Corporation's employees fail to use that
16 degree of care that a reasonable person in
17 the same situation would have used in one or
18 more of the following: assisting in personal
19 hygiene or in the provision of food,
20 clothing, or shelter for Joan Boice;
21 providing medical care for Joan Boice's
22 physical and mental health needs;
23 protecting Joan Boice from health and safety
24 hazards; and/or preventing malnutrition or
25 dehydration?

26

27 Answer: Yes.

28

1 If your answer to question 3 is yes, then
2 answer question 4. If you answered no, stop
3 here, and answer no further questions, and
4 have the presiding juror sign and date this
5 form.

6
7 No. 4. Was the employee's conduct a
8 substantial factor in causing harm to Joan
9 Boice?

10
11 Answer: Yes.

12
13 If your answer to question 4 is yes, then
14 answer question 5. If you answered no, stop
15 here, answer no further questions, and have
16 the presiding juror sign and date this form.

17
18 No. 5. Did Joan Boice prove that an
19 officer, a director, or a managing agent of
20 Emeritus Corporation engaged in one or more
21 of the following: (1) he or she had advance
22 knowledge of the unfitness of the employees
23 who committed the acts, and employed him or
24 her with a conscious disregard of the rights
25 or safety of others; (2) he or she
26 authorized, adopted, approved or ratified
27 the wrongful conduct of the employees who
28 committed the acts; or (3) that an officer,

1 director, or a managing agent of defendant
2 personally acted with recklessness,
3 oppression, fraud or malice?
4

5 Answer: Yes.
6

7 If your answer to question 5 is yes, then
8 answer question 6. If you answered no, stop
9 here, and answer no further questions, and
10 have the presiding juror sign and date this
11 form.
12

13 No. 6. Did Joan Boice prove in questions 1
14 through 5 above that an employee, officer,
15 director, or a managing agent acted with
16 recklessness, malice, oppression or fraud?
17

18 Answer: Yes.
19

20 If your answer to question 6 is yes, answer
21 question 7. If your answer is no, stop here
22 and answer no further questions, and have
23 your presiding juror sign and date the
24 verdict form.
25

26 Question No. 7. What were Joan Boice's
27 damages for pain, suffering or disfigurement
28 incurred before death?

1 Answer: \$3,875,000.

2
3 Please answer question 8.

4
5 Additional Findings

6
7 Question No. 8. Did you find that Emeritus
8 Corporation was guilty of malice, oppression
9 or fraud in the conduct upon which you base
10 the above findings?

11
12 Answer: Yes.

13
14 If your answers to question 8 is yes, answer
15 questions 9, 10, and 11. If your answer is
16 no, stop here and answer no further
17 questions, and have your presiding juror
18 sign and date the verdict form.

19
20 No. 9. Was the conduct upon which you based
21 your findings constituting malice,
22 oppression or fraud committed by one or more
23 officers, directors, or managing agents of
24 Emeritus Corporation acting on behalf of
25 Emeritus Corporation?

26
27 Answer: Yes.

28

1 Regardless of your answer to question 9,
2 answer question 10.

3
4 Question 10. Did an agent or employee of
5 Emeritus Corporation engage in the conduct
6 upon which you based your findings -- your
7 above findings with malice, oppression or
8 fraud, and did one or more officers,
9 directors, or managing agents of Emeritus
10 know of this conduct, and adopt or approve
11 it after it occurred?

12
13 Answer: Yes.

14
15 Regardless of your answer to question 10,
16 answer question 11.

17
18 Question 11. Did an agent or an employee of
19 Emeritus Corporation engage in the conduct
20 upon which you based your above findings
21 with malice, oppression or fraud, and did
22 one or more officers, directors, or managing
23 agents of Emeritus authorize this conduct?

24
25 Answer: Yes.

26
27 Dated March 4th, 2013. Signed Mary Shear,
28 Presiding Juror, Seat No. 2.

1 THE CLERK: Ladies and gentlemen of the jury, is
2 this your correct verdict?

3 THE JURY PANEL: Yes.

4 THE COURT: Before we proceed on to the next
5 verdict form, does either counsel wish to have the jury
6 polled on any of the questions in this verdict form?

7 MR. REID: I would, Your Honor, yes.

8 THE COURT: Which numbers would you like them
9 polled on?

10 MR. REID: On No. 3, 5, 6, and 8.

11 THE COURT: Okay.

12 Ladies and gentlemen, take out your copy of the
13 verdict form. You may recall that I told you that I may
14 be asking each of you how you voted on individual
15 questions.

16 So question No. 3 reads:

17 Did one or more of Emeritus Corporation's
18 employees fail to use that degree of care
19 that a reasonable person in the same
20 situation would have used in one or more of
21 the following: assisting in personal hygiene
22 or in the provision of food, clothing or
23 shelter for Joan Boice; providing medical
24 care for Joan Boice's physical and mental
25 health needs; protecting Joan Boice from
26 health and safety hazards; and/or preventing
27 malnutrition or dehydration?

28

1 The jury verdict forms reflects an answer that at
2 least one of you answered yes, so my question -- I am
3 going to be starting with Juror No. 1, Mr. Sutton, going
4 across to 6, and then down to 7 through 12 -- is, "Was
5 yes your answer?" Okay. In other words, did you answer
6 yes?

7 Mr. Sutton, did you answer yes?

8 JUROR NO. 1: Yes.

9 THE COURT: Ms. Shear, did you answer yes?

10 JUROR NO. 2: Yes.

11 THE COURT: Ms. Maketa, did you answer yes?

12 JUROR NO. 3: Yes.

13 THE COURT: Ms. Shantz, did you answer yes?

14 JUROR NO. 4: Yes.

15 THE COURT: Mr. Higgins, did you answer yes?

16 JUROR NO. 5: Yes.

17 THE COURT: Ms. Hallinan, did you answer yes?

18 JUROR NO. 6: Yes.

19 THE COURT: Ms. Pricer, did you answer yes?

20 JUROR NO. 7: Yes.

21 THE COURT: Mr. Jackson, did you answer yes?

22 JUROR NO. 8: Yes.

23 THE COURT: Ms. Call, did you answer yes?

24 JUROR NO. 9: Yes.

25 THE COURT: Ms. Bauer, did you answer yes?

26 JUROR NO. 10: Yes.

27 THE COURT: Mr. Brungardt, did you answer yes?

28 JUROR NO. 11: Yes.

1 THE COURT: Mr. Ericksen, did you answer yes?
2 JUROR NO. 12: Yes.
3 THE COURT: All right. 12 yes, 0 no.
4
5 The next question is Question No. 5:
6 Did Joan Boice prove that an officer,
7 director, or managing agent of Emeritus
8 Corporation engaged in one or more of the
9 following: (1) he or she had advance
10 knowledge of the unfitness of the employees
11 who committed the acts, and employed him or
12 her with a conscious disregard of the rights
13 or safety of others; (2) he or she
14 authorized, adopted, approved or ratified
15 the wrongful conduct of the employees who
16 committed the acts; or (3) that an officer,
17 director, or managing agent of defendant
18 personally acted with recklessness,
19 oppression, fraud or malice?
20 The verdict form has the box "Yes" checked.
21 Mr. Sutton, did you answer yes?
22 JUROR NO. 1: Yes.
23 THE COURT: Ms. Shear, did you answer yes?
24 JUROR NO. 2: Yes.
25 THE COURT: Ms. Maketa, did you answer yes?
26 JUROR NO. 3: Yes.
27 THE COURT: Ms. Shantz, did you answer yes?
28 JUROR NO. 4: Yes.

1 THE COURT: Mr. Higgins, did you answer yes?
2 JUROR NO. 5: Yes.
3 THE COURT: Ms. Hallinan, did you answer yes?
4 JUROR NO. 6: Yes.
5 THE COURT: Ms. Pricer, did you answer yes?
6 JUROR NO. 7: Yes.
7 THE COURT: Mr. Jackson, did you answer yes?
8 JUROR NO. 8: Yes.
9 THE COURT: Ms. Call, did you answer yes?
10 JUROR NO. 9: Yes.
11 THE COURT: Ms. Bauer, did you answer yes?
12 JUROR NO. 10: Yes.
13 THE COURT: Mr. Brungardt, did you answer yes?
14 JUROR NO. 11: Yes.
15 THE COURT: Mr. Ericksen, did you answer yes?
16 JUROR NO. 12: Yes.
17 The jury vote on that was 12 yes, 0 no.
18
19 Question 6 reads:
20 Did Joan Boice prove in questions 1 through
21 5 above that an employee, officer, director
22 or a managing agent acted with recklessness,
23 malice, oppression, or fraud?
24 The special verdict form has the box 6 checked.
25 Mr. Sutton, was that your answer?
26 JUROR NO. 1: Yes.
27 THE COURT: Ms. Shear, was that your answer?
28 JUROR NO. 2: Yes.

1 THE COURT: Ms. Maketa, was that your answer?
2 JUROR NO. 3: Yes.
3 THE COURT: Ms. Shantz, was that your answer?
4 JUROR NO. 4: Yes.
5 THE COURT: Mr. Higgins, was that your answer?
6 JUROR NO. 5: Yes.
7 THE COURT: Ms. Hallinan, was that your answer?
8 JUROR NO. 6: Yes.
9 THE COURT: Ms. Pricer, was that your answer?
10 JUROR NO. 7: Yes.
11 THE COURT: Mr. Jackson, was that your answer?
12 JUROR NO. 8: Yes.
13 THE COURT: Ms. Call, was your answer yes?
14 JUROR NO. 9: Yes.
15 THE COURT: Ms. Bauer, was your answer yes?
16 JUROR NO. 10: Yes.
17 THE COURT: Mr. Brungardt, did you answer yes?
18 JUROR NO. 11: Yes.
19 THE COURT: Mr. Ericksen, did you answer yes?
20 JUROR NO. 12: Yes.
21 MR. REID: Your Honor, may I also ask on question
22 7?
23 THE COURT: Yes.
24 The answer to question 6: 12 yes, 0 no.
25 Question 7 asked:
26 What were Joan Boice's damages for pain,
27 suffering or disfigurement incurred before
28 her death?

1 The jury verdict indicates that the number the
2 jury reached was \$3,875,000 or \$3.875 million.
3 Mr. Sutton, was that your number?
4 JUROR NO. 1: No.
5 THE COURT: Ms. Shear, was that your number?
6 JUROR NO. 2: Yes.
7 THE COURT: Ms. Maketa, was that your number?
8 JUROR NO. 3: Yes.
9 THE COURT: Ms. Shantz, was that your number?
10 JUROR NO. 4: Yes.
11 THE COURT: Mr. Higgins, was that your number?
12 JUROR NO. 5: Yes.
13 THE COURT: Ms. Hallinan, was that your number?
14 JUROR NO. 6: Yes.
15 THE COURT: Ms. Pricer, was that your number?
16 JUROR NO. 7: Yes.
17 THE COURT: Mr. Jackson, was that your number?
18 JUROR NO. 8: Yes.
19 THE COURT: Ms. Call, was that your number?
20 JUROR NO. 9: Yes.
21 THE COURT: Ms. Bauer, was that your number?
22 JUROR NO. 10: Yes.
23 THE COURT: Mr. Brungardt, was that your number?
24 JUROR NO. 11: Yes.
25 THE COURT: Mr. Ericksen, was that your number?
26 JUROR NO. 12: Yes.
27 The vote on that was 11 to 1.
28 Question 8 asks for an additional finding:

1 Did you find that Emeritus Corporation was
2 guilty of malice, oppression or fraud in the
3 conduct upon which you based the above
4 findings?
5 The special verdict form has the box "Yes" marked.
6 Mr. Sutton, was that your vote?
7 JUROR NO. 1: Yes.
8 THE COURT: Ms. Shear, was that your vote?
9 JUROR NO. 2: Yes.
10 THE COURT: Ms. Maketa, was that your vote?
11 JUROR NO. 3: Yes.
12 THE COURT: Ms. Shantz, was that your vote?
13 JUROR NO. 4: Yes.
14 THE COURT: Mr. Higgins, was that your vote?
15 JUROR NO. 5: Yes.
16 THE COURT: Ms. Hallinan, was that your vote?
17 JUROR NO. 6: Yes.
18 THE COURT: Ms. Pricer, was that your vote?
19 JUROR NO. 7: Yes.
20 THE COURT: Mr. Jackson, was that your vote?
21 JUROR NO. 8: Yes.
22 THE COURT: Ms. Call, was that your vote?
23 JUROR NO. 9: Yes.
24 THE COURT: Ms. Bauer, was that your vote?
25 JUROR NO. 10: Yes.
26 THE COURT: Mr. Brungardt, was that your vote?
27 JUROR NO. 11: Yes.
28 THE COURT: Mr. Ericksen, was that your vote?

1 JUROR NO. 12: Yes.

2 12 voted yes, 0 no.

3 Madame Clerk, you are ordered to record the
4 verdict effective today on that verdict form.

5 Let's move on now, please, to the next verdict
6 form for wrongful death for damages claimed by Eric
7 Boice, Nancee Boice, and Mark Boice, and I think you can
8 dispense with reading the caption.

9 **WRONGFUL DEATH VERDICT**

10 THE CLERK: [Reading:]

11 After the title, court and cause:

12 We, the jury, answer all questions submitted
13 to us based upon the standard that
14 plaintiffs are required to prove each of the
15 following more likely than not occurred:

16
17 Question No. 1. Did plaintiffs prove that
18 Emeritus Corporation neglected Joan Boice by
19 failing to use that degree of care that a
20 reasonable person in the same situation
21 would have used in assisting in personal
22 hygiene or in the provision of food,
23 clothing, or shelter; providing medical care
24 for her physical and mental health needs;
25 protecting her from health and safety
26 hazards, and/or preventing malnutrition or
27 dehydration?

28

1 Answer: Yes.

2

3 If your question is "Yes," answer question
4 2. If your answer is "No," stop here and
5 answer no further questions, and have the
6 presiding juror sign and date this form.

7

8 Question No. 2. Did plaintiffs prove that
9 the neglect of Joan Boice was a substantial
10 factor in causing her death?

11

12 Answer: Yes.

13

14 If your answer is "Yes," then answer
15 question 3. If you answered "No," stop here
16 and answer no further questions, and have
17 the presiding juror sign and date this form.

18

19 Question No. 3. Did plaintiffs prove that
20 the neglect which caused the death of Joan
21 Boice also was a substantial factor in
22 causing harm to Plaintiffs Eric Boice, Mark
23 Boice, and Nancee Boice?

24

25 Answer: Yes.

26

27 If you answered "No," stop here. Answer no
28 further questions, and have the presiding

1 juror sign and date this form. If you
2 answered "Yes" to question 3, answer
3 question 4.

4
5 Question 4. What are Eric Boice, Mark
6 Boice, and Nancee Boice's damages for:
7 (a) The loss of Joan Boice's love,
8 companionship, comfort, affection and
9 society from February 14th, 2009, to the
10 present?

11
12 Answer: \$250,000.

13
14 (b) The loss of Joan Boice's love,
15 companionship, comfort, care, affection, and
16 society from today forward?

17
18 Answer: 0.

19
20 Dated March 5th, 2013. Signed, Mary A.
21 Shear, Jury Foreperson, Seat No. 2.

22
23 Ladies and gentlemen of the jury, are these your
24 true and correct verdicts?

25 THE JURY PANEL: Yes.

26 THE COURT: Does either side wish to have the jury
27 polled?

28 MR. REID: The defense would, Your Honor, on

1 question 2 and question 4(a).

2 THE COURT: Ladies and gentlemen, we are going to
3 go through the same process on this verdict form,
4 please.

5 So on this verdict form, question 2 asks:

6 Did plaintiffs prove that the neglect of
7 Joan Boice was a substantial factor in
8 causing her death?

9 The special verdict form has the question answered
10 yes.

11 Mr. Sutton, was that your vote?

12 JUROR NO. 1: Yes.

13 THE COURT: Ms. Shear, was that your vote?

14 JUROR NO. 2: Yes.

15 THE COURT: Ms. Maketa?

16 JUROR NO. 3: Yes.

17 THE COURT: Ms. Shantz?

18 JUROR NO. 4: Yes.

19 THE COURT: Mr. Higgins?

20 JUROR NO. 5: Yes.

21 THE COURT: Ms. Hallinan?

22 JUROR NO. 6: Yes.

23 THE COURT: Ms. Pricer?

24 JUROR NO. 7: Yes.

25 THE COURT: Mr. Jackson?

26 JUROR NO. 8: Yes.

27 THE COURT: Ms. Call?

28 JUROR NO. 9: Yes.

1 THE COURT: Ms. Bauer?
2 JUROR NO. 10: No.
3 THE COURT: Mr. Brungardt?
4 JUROR NO. 11: Yes.
5 THE COURT: Mr. Jackson?
6 JUROR NO. 12: Yes.
7 The vote on that was 11 to 1.
8
9 No. 4. What are Eric Boice, Mark Boice, and
10 Nancee Boice's damages for (a) the loss of
11 Joan Boice's love, companionship, comfort,
12 affection and society from February 14th,
13 2009 to the present?
14 The jury has the number \$250,000.
15 Mr. Sutton, was that your vote?
16 JUROR NO. 1: No.
17 THE COURT: Ms. Shear, was that your vote?
18 JUROR NO. 2: Yes.
19 THE COURT: Ms. Maketa?
20 JUROR NO. 3: Yes.
21 THE COURT: Ms. Shantz?
22 JUROR NO. 4: Yes.
23 THE COURT: Mr. Higgins?
24 JUROR NO. 5: No.
25 THE COURT: Ms. Hallinan?
26 JUROR NO. 6: Yes.
27 THE COURT: Ms. Pricer?
28 JUROR NO. 7: Yes.

1 THE COURT: Mr. Jackson?

2 JUROR NO. 8: Yes.

3 THE COURT: Ms. Call?

4 JUROR NO. 9: Yes.

5 THE COURT: Ms. Bauer?

6 JUROR NO. 10: Yes.

7 THE COURT: Mr. Brungardt?

8 JUROR NO. 11: Yes.

9 THE COURT: Mr. Ericksen?

10 JUROR NO. 12: Yes.

11 The vote on that was 10 yes.

12 The clerk is ordered to record the verdicts on the
13 special verdict form for wrongful death at this time.

14 Ladies and gentlemen, your job is not complete at
15 this point. We will need to move into a Phase II in
16 which you will be determining for the Court certain
17 additional matters related to punitive damages. I want
18 to talk with you a little bit about the timing on all of
19 this.

20 For the 12 jurors that are currently seated in the
21 box, does anybody have a problem with their availability
22 through the end of next week, which would mean through
23 March 15th, which is the outside period of time that I
24 think you would need to be here to finish up?

25 Any of the 12 of you anticipate any problems with
26 being here in that period of time?

27 JUROR NO. 11: Starting like tomorrow, Judge?

28 THE COURT: Possibly tomorrow. And I am not

1 anticipating that it would go that entire period of
2 time. I'm just trying to get a sense of where we are,
3 because I know that one of our alternates has an
4 unfortunate circumstance in his family, and is it
5 Thursday and Friday that you can't be here?

6 ALTERNATE JUROR MEISTER: I'll be back Friday,
7 probably around 1:00 or 2:00.

8 THE COURT: And when are you leaving?

9 ALTERNATE JUROR MEISTER: Wednesday night.

10 THE COURT: So you would be gone all day Thursday,
11 and half a day Friday, but you would be here all day
12 tomorrow, is that correct, if we were going to actually
13 start taking testimony tomorrow?

14 ALTERNATE JUROR MEISTER: Yes.

15 THE COURT: Here is what I am going to ask the
16 jury to do:

17 Terrance, if you would, take the jury back to the
18 jury room for the time being so that I can talk to
19 counsel and figure out the timing on all of this.

20 I will bring you back in a little bit, okay?
21 Please take everything with you and follow Terrance.

22 Yes?

23 ALTERNATE JUROR RADCLIFFE: Do we go with?

24 THE COURT: Yes. For the purposes of just waiting
25 at this point, if our two alternates could follow
26 Terrance as well.

27 Please do not discuss the case any further in the
28 jury room. Just relax and wait for me to call you back,

1 okay?

2 - - -

3 **The following proceedings were had outside the**
4 **presence of the jury:**

5 THE COURT: All right. Please be seated.

6 I mentioned to all of you when we were talking in
7 chambers that I have reviewed your sets of papers, your
8 oppositions, and I am about 15 or 20 minutes away from
9 concluding my written tentative ruling. And I want to
10 give it to you because I want you to be able to tell me
11 if you think you can start the taking of testimony
12 tomorrow, and that would require that, to the extent any
13 of the defense witnesses that I'll tell you can testify,
14 would have to be here tomorrow as well.

15 We need to take a recess for about 15 or 20
16 minutes. It's not quite ten after. I'd like to resume
17 at 4:30. At that time -- I caution all of you that we
18 still have a second phase of this trial to go. There
19 should be no public comments out in the hallway or
20 anything that might get back to any of the potential
21 jurors in this case, and I ask that everybody act
22 appropriately under the circumstances.

23 I will see you all back here at 4:30. We are in
24 recess until that time.

25 [Recess.]

26 THE COURT: Let's just talk for a minute before I
27 bring the jury in. I'm pretty close. I have somebody
28 in legal research just checking one thing out for me

1 before I finalize my decision to you, which right now,
2 as I said, is in writing. It runs about nine pages,
3 single-spaced, and answers six separate questions for
4 you.

5 I want to call this jury in now, and I want to
6 start the taking of evidence tomorrow. For that purpose
7 I will share with you, after I let them go and tell them
8 what time to come back -- I want to give enough time --
9 I am going to get this done, and get it to you this
10 evening. I want to give you enough time tomorrow
11 morning to come in and argue on anything before we
12 actually start the taking of testimony.

13 So I am going to ask that you all be back here at
14 9:00 tomorrow morning.

15 Ms. Clement, you have one witness that you are
16 bringing in?

17 MS. CLEMENT: Yes, Your Honor.

18 THE COURT: How long do you anticipate his
19 testimony to be?

20 MS. CLEMENT: With defense questions, I don't
21 think more than two hours.

22 THE COURT: So at a minimum, tomorrow we'll have
23 Ms. Clement's economic expert, and your disclosed
24 economic expert that you had. Make sure that that
25 person is here.

26 You will know by tomorrow morning -- you'll know
27 by this evening if there are any additional witnesses or
28 not that you might arguably be permitted to bring, and

1 if so, they need to get on a plane and get down here.
2 They need to be here tomorrow, okay?

3 I am inclined to proceed, even though we -- well,
4 to go all day on Wednesday, and if in fact to go all day
5 on Thursday, since it looks like our 12 jurors are going
6 to be here, even though we may lose Mr. Meister, and I
7 am certainly not going to ask him to be here under those
8 circumstances. But we just need to get going on this.

9 Does anybody have anything you want to talk to me
10 about with respect to those decisions?

11 So my anticipation is we'll be in testimony
12 tomorrow, Wednesday, and Thursday. Right now Friday
13 doesn't look good. So it would be Wednesday and
14 Thursday, and if we needed to continue with the
15 testimony, it would be on Monday.

16 MS. CLEMENT: Can you let us know, Your Honor,
17 what what your inclination is at this point with regard
18 to other witnesses?

19 THE COURT: I am going to let you know before you
20 leave here in writing what my inclination is for all of
21 these witnesses, so you will know before you leave
22 tonight. But I want to get this jury in here and let
23 them go for the rest of the day.

24 MS. CLEMENT: So we'll start with Mr. Johnson at
25 10:00 a.m.?

26 THE COURT: Let's have him here at 10:00 a.m.
27 We'll have the jury here at 10:00 a.m. And you all need
28 to be here at 9:00 a.m. tomorrow morning, okay?

1 MR. REID: Yes, Your Honor.

2 THE COURT: All right. Can we bring the jury in?
3 And you had talked to me about something under
4 seal.

5 MS. CLEMENT: There's nothing under seal.

6 MS. WELLS: It's confidentiality.

7 THE COURT: We are going to talk about that after
8 we go off the record so I understand what all that is,
9 okay?

10 - - -

11 **The following proceedings were had in the**
12 **presence of the jury:**

13 THE COURT ATTENDANT: Please come to order. Be
14 seated.

15 THE COURT: All right. Ladies and gentlemen, you
16 are ordered to be back here tomorrow at 10:00 a.m. We
17 are going to start taking evidence tomorrow. We will be
18 in session from 10:00 until the end of the day tomorrow,
19 and on Thursday, with respect to evidence in this case,
20 and if all of the evidence is not in by the end of
21 Thursday, we'll pick up with the evidence on Monday.

22 Yes, sir?

23 ALTERNATE JUROR MEISTER: I will be in L.A. on
24 Thursday.

25 THE COURT: I am going to talk to you in just a
26 moment. I understand that.

27 We have some time pressures that are happening
28 here with respect to our jurors, and other cases that

1 kind of bumping up against it, so if you would like to
2 be here tomorrow to hear the evidence, or if you would
3 like me to release you at this point in time, I will do
4 one or the other, subject to your determination, since
5 you've been so good about being here for everything else
6 at this point.

7 What would you like me to do? Or do you want to
8 think about it tonight?

9 ALTERNATE JUROR MEISTER: You can release me as of
10 today then, if I can't go through the whole formality.

11 THE COURT: All right. Then sir, I want to thank
12 you very much for your service to this court. You have
13 been wonderful. And when this is all said and done,
14 you, and in fact all of the jurors, will be getting a
15 letter from me as well. I cannot give that to you at
16 this time. But I want to thank you very much.

17 What we will do is, I will have my clerk call you
18 when the verdict comes in, or is about to come in on the
19 Phase II, and if you would like to come over and hear
20 that, we will wait for you to come over and hear that.

21 THE ALTERNATE JUROR: I would love that.

22 THE COURT: All right. Then if you could -- on
23 your way out, if you could turn in your juror badge and
24 your notebook and everything to Terrance. And I'm sorry
25 about your brother-in-law. I wish you the best, and
26 your family.

27 ALTERNATE JUROR MEISTER: Thank you.

28 THE COURT: For the rest of you, I want you to

1 leave everything on the the chairs, your notebooks and
2 everything else. Remember the admonitions. I will see
3 you at 10:00 tomorrow morning. You are in recess.

4 - - -

5 **The following proceedings were had outside the**
6 **presence of the jury:**

7 THE COURT: Okay. Counsel, if you want to stick
8 around for a while, give me a few more minutes to finish
9 up on this, I will get you those rulings. And I will
10 also have Alicia e-mail them to you as well. Or if you
11 prefer, you can leave now, and I'll just have her e-mail
12 them to you as soon as they are ready, and then I will
13 see you for any oral argument with respect to it at 9:00
14 tomorrow morning. Would that be preferable?

15 MS. CLEMENT: May I ask a question?

16 THE COURT: Yes.

17 Please be seated, everyone.

18 MS. CLEMENT: Oh, thank you.

19 Since we won't be arguing it today, but tomorrow,
20 and I don't know what the result will be, may I ask if
21 the Court could include in her tentative ruling, if the
22 defendant has documents that have not otherwise been
23 produced, that those would be produced this evening so
24 that we might be prepared to go forward?

25 THE COURT: Yes. You can ask me that.

26 MS. CLEMENT: I ask the defense that question as
27 well, Your Honor.

28 THE COURT: Well, to the extent that -- I think

1 the only ones that that might arguably relate to -- I'll
2 put that in the record where I think it's relevant.

3 MS. CLEMENT: Thank you, Judge.

4 THE COURT: We'll go off the record, but if I
5 could just talk to counsel in chambers for a moment
6 about the protective order, or the confidentiality
7 order.

8 Is there an order that was actually signed by the
9 law-and-motion department, or is this a confidentiality
10 agreement that the parties have entered into amongst
11 themselves?

12 MS. WELLS: It was a stipulating confidentiality
13 agreement after some law and motion had occurred.

14 THE COURT: Is there a record of it in the court's
15 rulings, or is this something between the parties?

16 MS. WELLS: It's between the parties.

17 THE COURT: You have a copy of whatever was
18 stipulated to?

19 MS. WELLS: I probably do have it here. I would
20 have to look for it.

21 THE COURT: Why don't you look for it, and then
22 tell Terrance you are ready to come in and talk to me.

23 MR. REID: Would it be okay if I allowed Ms. Wells
24 to handle that, and go get ready -- be excused?

25 THE COURT: Works for me.

26 THE CLERK: As far as the exhibits not admitted,
27 are we going to use any of those? Because I need to
28 know.

1 THE COURT: My sense is we pull them back in, and
2 we have them not in the binders that -- we'll leave the
3 binders that are in the jury room right now in the jury
4 room, and the remaining -- they are still in the
5 binders, are they not?

6 THE CLERK: Most of them, yes.

7 THE COURT: Tonight or tomorrow morning, let's get
8 them back in the binders, and bring those binders back
9 out and stick them on the shelves over here, and we'll
10 see what is used -- what they want to use in Phase II,
11 okay?

12 THE CLERK: Yes.

13 THE COURT: Okay. We are in recess.

14 [Proceedings recessed until March 6, 2013.]

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